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IN THE SUPREME COURT

of the

UNITED STATES

October Term, 1975

No. 75-1362

EDMUND J. OLSEN,

Petitioner,

vs.

THE PEOPLE OF THE TERRITORY OF GUAM,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF THE CASE

The sole issue presented by Edmund J. Olsen, Petitioner, to this Court is whether the Guam Legislature has the power to create a Supreme Court of Guam, or whether all appeals from the Superior Court of Guam must be brought before the Appellate Division of the District Court of Guam. Petitioner's conviction is not an issue in Petitioner's Petition before this Court.

After conviction, the Petitioner appealed simultaneously and by the same pleading to both the Supreme Court of Guam and to the Appellate Division of the District Court of Guam, since, at that time, the case of Agana Bay Development Co. (Hong Kong) Ltd. v. Supreme Court of Guam; Dillingham Corp. of the Pacific, Real Party in Interest, No. 75-1059, 9th Circuit Court of Appeals, Jan 14, 1976 was on appeal and not decided. After the decision in the above case affirming the power of the Guam Legislature to create such a Supreme Court, and its existence,

the Appellate Division of the District Court dismissed the appeal before it in the instant case for lack of jurisdiction since the Guam Legislature had, by Public Law (Guam) 12-85, transferred all appellate jurisdiction to the Supreme Court of Guam.

If this petition for a Writ of certiorari is denied, or this Court affirms the 9th Circuit Court of Appeals, Petitioner having filed a timely notice of Appeal to the Supreme Court of Guam, will have his whole case reviewed by this Court.

At the present time no court on Guam is hearing appeals from the Superior Court of Guam because the District Court is following the Decision of the 9th Circuit Court and the Supreme Court of Guam does not wish to hear any cases until its existence is finally determined.

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REASONS FOR DENYING THE WRIT

1. RULE 19 PROVIDES THAT WRIT IS NOT A MATTER OF RIGHT AND IS TO BE GRANTED ONLY WHERE THERE ARE SPECIAL AND IMPORTANT REASONS THEREFOR.

In Supreme Court Rule 19 the Court states several reasons for the Court considering granting a Writ of Certiorari. The Petitioners have stated no special reason for the granting of such a Writ. Petitioners have not stated that:

a. A State (Territorial) court has decided as Federal questions of substance an issue not previously determined by this Court.

b. A court of appeals has rendered a decision which would be in conflict with the decision of another court of appeals on the same matter; the court of appeals has decided an important state or territorial question in conflict with state or ter-

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ritorial law; or has decided an important question of federal law which has not been, but should be, settled by this Court; or has decided a federal question in a way to conflict with applicable decisions of this Court; or has acted in a manner to call on this Court's supervisory powers. The 9th Circuit Court of Appeals decided that the Organic Act of Guam permitted the Legislature of Guam to create its own appellate system of courts, or a court, because this Act, in granting this power, was broader in its grant of powers to the territorial legislature than were previous Organic Acts which governed former territories, or existing ones.

That Congress has the power to prescribe the jurisdiction of territorial courts, or to delegate that power to the local legislature is supported by the cases of City of Panama, v. Phelps, 101 U.S. 453, 25 L.Ed. 1061, 1064 and

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The American Insurance Co. v. 356 Bales of Cotton, 26 U.S. 511, 7 L.Ed. 242 (1828). Both cases state the proposition that Congress may permit a territory to create its own tribunals, or may specify them in the applicable Organic Act. In the former case, the Opinion of the Court states:

> ". . .; and in organizing Territories Congress may establish tribunals for the exercise of such (admiralty) jurisdiction, or they may leave it to the Legislature of the Territory to create such tribunals."

2. ANSWER TO PETITIONER'S (ASSUMED) REASON FOR GRANTING WRIT.

While Petitioner has not stated any specific reason for the Court's granting the Writ, it is assumed that the reason is that this is a matter of such importance as to require this Court to review it. While it appears that Congress has not, previous to the Organic Act of Guam, granted to a territory the right to create its own appellate system if it desires, there is no question that Congress may do so, and has, in

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the cases cited above, used its discretion in opposing directions in two different territories in providing for admiralty jurisdiction (a federal jurisdiction) in two territories. In Florida, power was given over this matter to the local legislature to create the proper courts to hear Admiralty cases. In the territory of Washington, the Congress provided the District Court, created by the Organic Act, with this jurisdiction. Under the Organic Act of Guam, Congress provided that the Appellate Division of the District Court (the federal court for Guam) should have whatever appellate jurisdiction the Legislature of Guam should determine, and that the Judicial Power of Guam should be exercised by the District Court "and" any court or courts organized by the Guam Legislature (48 U.S.C.A. Sec. 1424(a)). Both the District Court and any courts the local legislature may establish were given the same equal share of the "Judicial Power"

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of Guam.

After the Guam Legislature had created, by Guam P.L. 1-17, an Appellate Division of the District Court, pursuant to its powers granted to it by 48 U.S.C.A. Sec. 1424(a), Congress amended said by providing a procedure, in the Organic Act, whereby appeals could be taken to this Appellate Division and, thereby, ratifying the action of the Guam Legislature. Said amendment does not require appeals to be heard by said Appellate Division, but only sets a procedure for such appeals as may be heard by it. The new paragraph begins:

> "Appeals to the District Court of Guam shall be heard. . ."

The various Appendices to the Petition for a Writ of Certiorari show clearly that the final version of the Organic Act differed considerably from that proposed by the Department of Interior, which proposal was said by them to be similar to previously enacted Organic Acts. The Organic Act

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of Guam as passed is unique in the powers it gives to the local territorial authorities.

CONCLUSION

The Decision by the 9th Circuit Court of Appeals correctly decided the issue before this Court in the Agana Bay case (No. 75-1059, 9th CA, 1-14-76) based upon sound precedent and clear statutes. No local statutes were overturned and the decision did not contradict any previous federal court decisions. This court has recognized and upheld the power of Congress to permit territorial legislatures to create territorial courts to hear what may be "federal jurisdiction" cases in states. The Decision of the 9th CA shows clearly that Guam has the power under its Organic Act to create a Supreme Court and to deprive the District Court of its local appellate jurisdiction, which was first granted to it by the Guam Legislature.

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While it is true that this issue must be decided as soon as possible to permit Guam to have a court to which cases from the Superior Court may be appealed, such a resolution will come just as quickly by a denial of the Writ of Certiorari as by a full review of the issue by this Court.

Finally, if Congress wishes to create a route of appeal from the Supreme Court of Guam to an Article III court, it has every right and power to do so. A law which would accomplish this was introduced into the House of Representatives during this Congress.

The petitioner having failed to establish any error in the decision of the 9th Circuit Court, and having failed to state any other reasons why a Writ of Certiorari should be granted, his petition should be denied.

Respectfully submitted,

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